

JOHN L. BURRIS, ESQ., SBN 69888
BENJAMIN NISENBAUM, ESQ. SBN 222173
JAMES COOK, ESQ., SBN 300212
LAW OFFICES OF JOHN L. BURRIS
Airport Corporate Center
7677 Oakport St., Suite 1120
Oakland, CA 94621
Telephone: (510) 839-5200
Facsimile: (510) 839-3882
Email: John.Burris@johnburrislaw.com
Email: Ben.Nisenbaum@johnburrislaw.com
Email: James.Cook@johnburrislaw.com
Attorneys for Plaintiffs

VERONICA A.F. NEBB
City Attorney, SBN 140001
BY: MEERA BHATT
Assistant City Attorney, SBN 259203
KATELYN M. KNIGHT
Assistant City Attorney, SBN 264573
FARRAH HUSSEIN
Deputy City Attorney, SBN 305726
CITY OF VALLEJO, City Hall
555 Santa Clara Street, 3rd Floor
Vallejo, CA 94590
Tel: (707) 648-4545
Fax: (707) 648-4687
Email: Meera.Bhatt@cityofvallejo.net
Katelyn.Knight@cityofvallejo.net
Farrah.Hussein@cityofvallejo.net

Attorneys for Defendants CITY OF VALLEJO and JARRETT TONN

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NEFTALI MONTERROSA, individually and
as co-successor-in-interest to Decedent SEAN
MONTERROSA; NORA MONTERROSA,
individually and as co-successor-in-interest to
Decedent SEAN MONTERROSA;
MICHELLE MONTERROSA, individually;
ASHLEY MONTERROSA, individually,

No. 2:20-cv-01563-TLN-DB

**STIPULATED PROTECTIVE ORDER
PURSUANT TO CIVIL LOCAL RULE
141.1**

VS.

CITY OF VALLEJO, a municipal corporation; JARRETT TONN, individually, and, Vallejo police officers DOES 1-25, inclusive,

Defendants.

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Particularly as this matter arises from an incident that is still under criminal investigation. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and for which public disclosure is likely to result in particularized harm and violate privacy interests recognized by law. This information may include:

- a. files related to the criminal investigation of the incident while the criminal investigation and review and any consequent criminal proceedings are pending;
- b. personnel file records of any peace officer;
- c. medical records;
- d. social security numbers and similar sensitive identifying information (unless redacted by order or by agreement of all parties).

This information shall not include records and information subject to disclosure pursuant to Cal. Penal Code § 832.7(b) that have been publicly disclosed.

2.3 Counsel (without qualifier): Outside counsel of record where applicable and in-house counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 In-House Counsel: attorneys who are employees of a party to this action. In-house counsel does not include outside counsel of record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of

1 that party.

2 2.10 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
8 organizing, storing, or retrieving data in any form or medium) and their employees and
9 subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material
16 (as defined above), but also (1) any information copied from Protected Material; (2) all copies,
17 excerpts, summaries, or compilations of Protected Material that reveal the source of the
18 Protected Material or that reveal specific information entitled to confidentiality as a matter of
19 law; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might
20 reveal Protected Material. However, the protections conferred by this Stipulation and Order do
21 not cover the following information: (a) any information that is in the public domain at the time
22 of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
23 Receiving Party as a result of publication not involving a violation of this Order, including
24 becoming part of the public record through trial or otherwise; and (b) any information known to
25 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
26 from a source who obtained the information lawfully and under no obligation of confidentiality
27 to the Designating Party. ; (c) any information mentioned or referenced in a deposition or in
28 other pretrial or trial proceedings, unless such portions of testimony have been designated as

1 confidential pursuant to section 5.2 (b) of this order. Any use of Protected Material at trial shall
2 be governed by a separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by
5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
6 order otherwise directs. For records subject to Penal Code § 832.7(b), the confidentiality
7 obligations imposed by this Order shall cease with respect to any portions of records disclosed to
8 the public at the time that such information and materials are disclosed. The confidentiality
9 obligations imposed by this Order shall remain in full force and effect with respect to records and
10 portions of records redacted or otherwise withheld from public disclosure.

11 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
12 defenses in this action, with or without prejudice; and (2) final judgment herein after the
13 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
14 including the time limits for filing any motions or applications for extension of time pursuant to
15 applicable law.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
18 or Non-Party that designates information or items for protection under this Order must take care
19 to limit any such designation to specific material that qualifies under the appropriate standards.
20 The Designating Party must designate for protection only those parts of material, documents,
21 items, or oral or written communications that qualify – so that other portions of the material,
22 documents, items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or retard the case development process or to impose unnecessary
27 expenses and burdens on other parties) expose the Designating Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it designated for

1 protection do not qualify for protection, that Designating Party must promptly notify all other
2 Parties that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
4 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
5 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
6 designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
10 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
11 a portion or portions of the material on a page qualifies for protection, the Producing Party also
12 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
13 margins).

14 A Party or Non-Party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has indicated which
16 material it would like copied and produced. During the inspection and before the designation, all
17 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
18 inspecting Party has identified the documents it wants copied and produced, the Producing Party
19 must determine which documents, or portions thereof, qualify for protection under this Order.
20 Then, before producing the specified documents, the Producing Party must affix the
21 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also must clearly
23 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
25 Designating Party identify on the record, before the close of the deposition, hearing, or other
26 proceeding, all protected testimony. Alternatively, the Designating Party may designate portions
27 of testimony within 15 days after receipt of the transcript by providing notice to all parties in
28 writing.

1 (c) for information produced in some form other than documentary and for any other
2 tangible items, that the Producing Party affix in a prominent place on the exterior of the
3 container or containers in which the information or item is stored the legend
4 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
5 the Producing Party, to the extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
7 information or items does not, standing alone, waive the Designating Party’s right to secure
8 protection under this Order for such material. Upon timely correction of a designation, the
9 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
10 with the provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
15 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
19 process by providing written notice of each designation it is challenging and describing the basis
20 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
21 notice must recite that the challenge to confidentiality is being made in accordance with the
22 Protective Order. The parties shall attempt to resolve each challenge in good faith and must
23 begin the process by conferring directly (in voice to voice dialogue; other forms of
24 communication are not sufficient) within 30 days of the date of service of notice. In conferring,
25 the Challenging Party must explain the basis for its belief that the confidentiality designation was
26 not proper and must give the Designating Party an opportunity to review the designated material,
27 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis
28 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge

1 process only if it has engaged in this meet and confer process first or establishes that the
2 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the parties shall meet and confer regarding resolution by informal discovery
5 conference. If both parties do not agree to submit the dispute to the Court via informal discovery
6 conference, the Receiving Party shall file and serve a motion to de-designate under Civil Local
7 Rule 251 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the
8 parties agreeing that the meet and confer process will not resolve their dispute. Each such motion
9 must be accompanied by a competent declaration affirming that the movant has complied with
10 the meet and confer requirements imposed in the preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating
12 Party.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
15 or produced by another Party or by a Non-Party in connection with this case only for
16 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
17 disclosed by any party only to the categories of persons and under the conditions described in
18 this Order. When the litigation has been terminated, a Receiving Party must comply with the
19 provisions of section 13 below (FINAL DISPOSITION). Protected Material must be stored and
20 maintained by all parties at a location and in a secure manner that ensures that access is limited
21 to the persons authorized under this Order.

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by agreement of both Designating Party and
24 Receiving Party, all parties may disclose any information or item designated
25 “CONFIDENTIAL” only to:

26 a) Counsel for any party to the action.

27 b) Paralegal, stenographic, clerical and secretarial personnel regularly employed by
28 counsel;

- c) Court personnel including stenographic reporters engaged in such proceedings as are necessarily incidental to preparation for the trial of this action;
- d) Any outside expert or consultant retained in connection with this action and not otherwise employed by either party;
- e) Any "in house" expert designated by defendants to testify at trial in this matter;
- f) Witnesses, other than the plaintiff herein, who may have the documents disclosed to them during deposition proceedings; the witnesses may not leave the depositions with copies of the documents, and shall be bound by the provisions of this order;
- g) Any Neutral Evaluator or other designated ADR provider;
- h) Parties to the action; and
- i) The jury, should the matter go to trial.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

- a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
2 shall bear the burden and expense of seeking protection in that court of its confidential material –
3 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
4 Party in this action to disobey a lawful directive from another court.

5 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
6 **THIS LITIGATION**

7 The terms of this Order are applicable to information produced by a Non-Party in this
8 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
9 connection with this litigation is protected by the remedies and relief provided by this Order.
10 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
11 additional protections.

12 In the event that a Party is required, by a valid discovery request, to produce a Non-
13 Party's confidential information in its possession, and the Party is subject to an agreement with
14 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 15 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of
16 the information requested is subject to a confidentiality agreement with a Non-Party;
17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
18 litigation, the relevant discovery request(s), and a reasonably specific description of the
19 information requested; and
20 (3) make the information requested available for inspection by the Non-Party.

21 If the Non-Party fails to object or seek a protective order from this court within 14 days
22 of receiving the notice and accompanying information, the Receiving Party may produce the
23 Non-Party's confidential information responsive to the discovery request. If the Non-Party
24 timely seeks a protective order, the Receiving Party shall not produce any information in its
25 possession or control that is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
27 burden and expense of seeking protection in this court of its Protected Material.

28 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

1 If a Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
 2 any person or in any circumstance not authorized under this Stipulated Protective Order, the
 3 Party must immediately (a) notify in writing all Parties of the unauthorized disclosures, (b) use
 4 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person
 5 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
 6 request such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
 7 that is attached hereto as Exhibit A.

8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 9 **PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 11 produced material is subject to a claim of privilege or other protection, the obligations of the
 12 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 13 provision is not intended to modify whatever procedure may be established in an e-discovery
 14 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 15 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 16 communication or information covered by the attorney-client privilege or work product
 17 protection, the parties may incorporate their agreement in the stipulated protective order
 18 submitted to the court.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 21 seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 23 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 25 no Party waives any right to object on any ground to use in evidence of any of the material
 26 covered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission of all parties or a court
 28 order secured after appropriate notice to all interested persons, a Party may not file in the public

1 record in this action any Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 141. Protected Material may only be filed under
3 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
4 Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request establishing that
5 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
6 protection under the law. If a Party's request to file Protected Material under seal pursuant to
7 Civil Local Rule 141(b) is denied by the court, then the any Party may file the information in the
8 public record pursuant to Civil Local Rule 141(e)(1) unless otherwise instructed by the court.

9 **13. FINAL DISPOSITION**

10 Within 60 days after the final disposition of this action, as defined in paragraph 4, upon
11 written notification served by Producing or Designating Party, each Receiving Party must return
12 all Protected Material to the Producing Party or destroy such material. As used in this
13 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and
14 any other format reproducing or capturing any of the Protected Material. Whether the Protected
15 Material is returned or destroyed, the Receiving Party must submit a written certification to the
16 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
17 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
18 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
19 abstracts, compilations, summaries or any other format reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
21 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
22 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
23 consultant and expert work product, even if such materials contain Protected Material. Any such
24 archival copies that contain or constitute Protected Material remain subject to this Protective
25 Order as set forth in Section 4 (DURATION).

26
27 SO STIPULATED.
28

1 DATED: December 14, 2020

2 /s/ Ben Nisenbaum
3 JOHN BURRIS
4 BEN NISENBAUM
5 JAMES COOK
6 Attorneys for Plaintiffs

7 DATED: December 14, 2020

Respectfully submitted,

8 /s/ Katelyn M. Knight
9 MEERA BHATT
10 KATELYN M. KNIGHT
11 FARRAH HUSSEIN
12 Attorneys for Defendants
13 CITY OF VALLEJO and JARRETT TONN

14 **ORDER**

15 Pursuant to the parties' stipulation, IT IS SO ORDERED.

16 IT IS FURTHER ORDERED THAT:

17 1. Requests to seal documents shall be made by motion before the same judge who will
18 decide the matter related to that request to seal.

19 2. The designation of documents (including transcripts of testimony) as confidential
20 pursuant to this order does not automatically entitle the parties to file such a document with the
21 court under seal. Parties are advised that any request to seal documents in this district is
22 governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be
23 sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a).
24 However, a mere request to seal is not enough under the local rules. In particular, Local Rule
25 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other
26 authority for sealing, the requested duration, the identity, by name or category, of persons to be
27 permitted access to the document, and all relevant information." L.R. 141(b).
28

1 3. A request to seal material must normally meet the high threshold of showing that
2 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially
3 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”
4 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016);
5 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

6 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of
7 certain documents, at any court hearing or trial – such determinations will only be made by the
8 court at the hearing or trial, or upon an appropriate motion.

9 5. With respect to motions regarding any disputes concerning this protective order which
10 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local
11 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex
12 parte basis or on shortened time.

13 6. The parties may not modify the terms of this Protective Order without the court’s
14 approval. If the parties agree to a potential modification, they shall submit a stipulation and
15 proposed order for the court’s consideration.

16 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
17 of the terms of this Protective Order after the action is terminated.

18 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is
19 hereby DISAPPROVED.

20 DATED: December 15, 2020

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE